

**CHAPTER 67-23-04**  
**SPECIAL EDUCATION DISPUTE RESOLUTION OPTIONS AND APPEALS**

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**67-23-04-01. Formal dispute resolution procedures under Part B of IDEA.**

1. Part B of IDEA and its regulations require that each state adopt procedures for receiving and resolving disputes between school districts and families regarding special education services.
2. The department urges that reasonable attempts be made at the local level to resolve disagreements regarding the provision of special education services, including informal meetings with teachers, specially called team meetings, and formal dispute resolution by third parties.
3. Contact with the department is through one or more of the following channels, with a request resulting in:
  - a. Information or technical assistance, which is a response to a concern that may include negotiation, consultation, providing information, providing clarification, or making a referral.
  - b. Mediation, which is a process to assist parents and schools in resolving disagreements regarding students' special education services and may be requested at any time.
  - c. A complaint, which is a formal process resulting from an alleged violation of Part B of IDEA which includes an investigation by department staff and resulting in a determination of findings of facts, conclusions, and reasons for the final decision.
  - d. A due process hearing, which is an evidentiary hearing held before an administrative law judge who renders a final decision subject to civil action.
4. This section applies to disputes specifically between families of students with disabilities and schools.

**History:** Effective February 1, 2000.

**General Authority:** NDCC 15-59-05

**Law Implemented:** NDCC 15-59, 15-59-05; 20 USC 1415

#### **67-23-04-02. Mediation under Part B of IDEA.**

1. Any parent of a child with a disability who is receiving special education services or who is suspected of needing special education services and who has concerns that are not resolved through speaking with the student's general or special education teacher, the building principal, the superintendent, or the district's special education director may request mediation to resolve those concerns. Mediation may be requested with respect to any matter relating to the identification, evaluation, or educational placement of a child with a disability or the provision of a free appropriate public education to the child.
2. A school district or local education agency may also request mediation to help resolve a concern with the parent of a child with a disability.
3. Requests for mediation may be made to the local special education director who will then notify the department of that request or may be made directly to the department.
4. The mediation is both voluntary and confidential.
5. Both parents of the student with a disability and the school district must agree to mediation before any mediator is appointed.
6. A qualified mediator is required.
7. The department must bear the cost related to and make arrangements for special education mediation.
8. The use of mediation does not preclude the parents of a child with a disability or the school district from requesting a due process hearing.

**History:** Effective February 1, 2000.

**General Authority:** NDCC 15-59-05

**Law Implemented:** NDCC 15-59, 15-59-05; 20 USC 1411(f)(3) 1415(e)

#### **67-23-04-03. Filing of a complaint under Part B of IDEA.**

1. If a parent of a student with disabilities or any interested person, including school district employees, believes a school district has violated a requirement of Part B of IDEA, the person may file a written complaint with the department.
2. The complaint must describe the problem, include the name and contact information, and give specific facts about the problem.
3. The complaint must be sent to:

Director of Special Education

North Dakota Department of Public Instruction  
600 East Boulevard Avenue, Dept. 201  
Bismarck, ND 58505-0440

4. When a written complaint is filed, the department shall investigate and render a written decision within sixty days.
5. Any complaint filed under Part B of IDEA must include:
  - a. The date;
  - b. The name of the district, unit, or individual the complaint is against;
  - c. The name, address, and telephone number of the person making the complaint;
  - d. The name, address, and telephone number of the student involved;
  - e. A statement that a public agency has violated a requirement of Part B of the Individuals With Disabilities Education Act identifying the portion of Part B alleged to be violated;
  - f. A summary of the complaint, including facts substantiating an alleged violation of Part B of IDEA; and
  - g. The signature of the person making the complaint.

**History:** Effective February 1, 2000.

**General Authority:** NDCC 15-59-05

**Law Implemented:** NDCC 15-59, 15-59-05; 20 USC 1221 e-3

**67-23-04-04. Investigation of complaint filed under Part B of IDEA.**

1. An investigation of a complaint under Part B of IDEA must include the following:
  - a. Notification to the complainant that the complaint has been received and will be investigated;
  - b. Notification, including a copy of the complaint, to the respondent of the complaint that a complaint has been filed and will be investigated;
  - c. The gathering of information necessary to resolve the complaint; and

- d. The opportunity for the complainant to submit additional information, either orally or in writing, about the allegations in the complaint.
2. The department has sixty calendar days from the date of the receipt of the complaint to resolve the complaint. An extension of this time limit shall be made in the event of illness or the unavailability of essential persons for interviews with respect to a particular complaint.
3. The investigation of the complaint must result in a letter of resolution issued by the state director of special education.
4. The letter of resolution must contain findings of fact, conclusions, and the reasons for the final decision.
5. The final decision may be one of the following:
  - a. The respondent is in compliance;
  - b. The respondent is not in compliance and voluntary corrective action has taken place during the course of the investigation;
  - c. The respondent is not in compliance and the procedures for effective implementation of the department's final decision are listed and may include technical assistance activities, negotiations, or corrective actions to achieve compliance;
  - d. The superintendent of public instruction may enforce the department's determination of a complaint by withholding state special education funds due a school district that is found to be in violation of providing a free appropriate public education in an amount equal to the cost of meeting the affected individual student's needs; or
  - e. The issues raised fall outside the parameters of Part B of IDEA.

**History:** Effective February 1, 2000.

**General Authority:** NDCC 15-59-05

**Law Implemented:** NDCC 15-59, 15-59-05; 20 USC 1221 e-3

#### **67-23-04-05. Due process hearing under Part B of IDEA.**

1. A due process hearing, which is a formal legal proceeding, may be requested if the parent of a child with disabilities or a child who may have a disability, disagrees with the identification, evaluation, educational placement, or other aspect relating to the student with disabilities for appropriate public education.

2. The school district may also request a due process hearing when a parent has refused consent for evaluation or placement or to demonstrate that the school district has conducted an appropriate evaluation or offered a free appropriate public education to a student with disabilities.
3. Any hearing request must include:
  - a. The name and address of the child;
  - b. The school that the child is attending;
  - c. A description of the problem including facts about the problem; and
  - d. Any suggestions the parent or school district has for solving the problem.
4. Hearing requests are made to:

Director of Special Education  
North Dakota Department of Public Instruction  
600 East Boulevard Avenue, Dept. 201  
Bismarck, ND 58505-0440
5. An administrative law judge from the office of administrative hearings shall conduct the hearing.
6. A party to the hearing has the following rights:
  - a. The right to representation by an attorney;
  - b. The right to attendance by individuals who have knowledge or training about children with disabilities;
  - c. The right to present evidence and confront, cross-examine, and require attendance of witnesses;
  - d. The right to a written, or, at the option of the parents, an electronic verbatim record of the hearing; and
  - e. The right to a written or, at the option of the parents, an electronic version of the findings of fact and decision.
7. At least five business days before a hearing, school districts and parents must disclose to each other all evaluations of the child completed by that date and recommendations based on those evaluations that are intended to be used at the hearing.

8. The administrative law judge may bar any party that fails to comply with the disclosure of evidence before a hearing or the introduction of undisclosed evaluations or recommendations at the hearing without the consent of the other party.
9. During the process of hearing and appeal, the child with disabilities shall remain in the child's current educational placement, unless:
  - a. The parents and school district agree to another placement;
  - b. The child with disabilities is applying for initial admission to a public school and the parents consent to the child's placement with disabilities in the public school program; or
  - c. The child with disabilities is removed to an interim alternative educational setting by school personnel or a hearing officer.
10. The court may award reasonable attorney's fees to the parents of a child with a disability if they prevail in the action. Attorney's fees may be reduced or denied.
11. The hearing must be completed and a final order issued within forty-five days of the department's receipt of a hearing request unless the administrative law judge grants an extension of time at the request of any party.
12. For purposes of removal of a child with a disability from the child's current educational placement due to discipline procedures:
  - a. If the child's parent disagrees that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement, the parent may request a hearing.
  - b. The state or local educational agency shall arrange for an expedited hearing in any case described in subdivision a if a hearing is requested by a parent.
  - c. If school personnel maintain that it is dangerous for the child to be in the current placement, meaning placement prior to removal to the interim alternative educational setting, during the pendency of the due process proceedings, the local educational agency may request an expedited due process hearing.

**History:** Effective February 1, 2000.

**General Authority:** NDCC 15-59-05

**Law Implemented:** NDCC 15-59, 15-59-05; 20 USC 1400-1419

**67-23-04-06. Other formal dispute resolution procedures.** Rules regarding dispute resolution between a school district and the department of public instruction regarding state or federal funds are located in chapter 67-22-01.

**History:** Effective February 1, 2000.

**General Authority:** NDCC 15-59-05

**Law Implemented:** NDCC 15-59, 15-59-05; 20 USC 1400-1419